



via email: [tgifford@villageofscotiany.gov](mailto:tgifford@villageofscotiany.gov)

July 13, 2022

Mayor Tom Gifford  
Village of Scotia  
4 N. Ten Broeck St.  
Scotia, New York 12302

**Re: Proposal for Survey Services**  
**Sunnyside Avenue**  
**Scotia, New York**  
**MJ Proposal No.: 2022371**

Dear Mayor Gifford:

M.J. Engineering and Land Surveying, P.C. (MJ) is pleased to submit this proposal for surveying services for the property referenced above.

## **Scope of Work**

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### **Boundary Survey**

MJ will complete a boundary survey for a parcel of land, described in a Quitclaim Deed from Raymond M. Piotrowski to the Village of Scotia, dated May 19, 2022 and filed in the Schenectady County Clerk's Office on May 23, 2022 in Book 2085 of Deeds at page 196 (Inst #202227280). MJ will perform reconnaissance to identify physical features or markings on the ground that may serve as evidence as to the position of record lines. An MJ field crew will conduct a field survey to locate the recovered evidence. MJ will analyze the evidence and record information and determine the position of the property boundary. Upon completion of the boundary determination, MJ shall prepare a map, signed and sealed by a Licensed NYS Land Surveyor, showing the resulting boundaries and parcel configuration.

### **Fee**

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MJ proposes to complete the above-listed services for a Lump Sum Fee of \$ 4,100.00.

### **Assumptions, disclaimers, and tasks not included in this proposal**

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This proposal has been prepared assuming the following:

1. Work not specifically included in the above referenced Scope of Services is excluded.
2. Complete access to the property will be provided to MJ staff during field work.



3. Access to the active adjoining rail corridor is not required.
4. The setting of boundary monumentation is not required.

### **Schedule and Summary**

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If the above scope of work is acceptable, please sign and return an executed copy of the agreement. We will complete the identified scope of work within four (4) weeks from receipt of the signed authorization, barring any delays due to weather or circumstances beyond our control.

We appreciate the opportunity to offer this proposal. Please feel free to contact John Quinn at 518-371-0799 should you need additional information.

Sincerely,

Michael D. Panichelli, P.E.  
President

### **Agreement to Contract and Authorization to Proceed**

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I hereby authorize M. J. Engineering and Land Surveying, P.C. to proceed with the scope of services as described above.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Attached to and made part of Agreement between the Client and M.J. Engineering and Land Surveying, P.C. with its principal office at 1533 Crescent Road, Clifton Park, New York 12065 (Consultant) in respect to the Project proposed by the Client.

The Consultant is an independent contractor and as such is not an agent or employee of the Client.

## **1.0 GENERAL**

The Consultant shall perform for the Client professional consulting services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as the Client's professional consulting representative for the Project.

Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue valid and binding upon the parties. Client and Consultant shall attempt in good faith to replace any invalid or unenforceable provisions of this Agreement with provisions which are valid and enforceable and which come as close as possible to expressing the intention of the original provisions.

## **2.0 MEANING OF TERMS**

As used herein the term "this Agreement" refers to the Proposal Letter or Agreement to which these General Terms and Conditions are attached as if they were part of one and the same document.

## **3.0 CLIENT'S RESPONSIBILITIES**

Client shall:

1. Provide all criteria and full information as to Client's requirements for the Project,
2. Designate a person to act with authority on the Client's behalf in respect to all aspects of the Project,
3. Examine and respond promptly to the Consultant's submissions,
4. Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any defect in the work,
5. Guarantee access to and make all provisions for the Consultant to enter upon public and private property,
6. As appropriate and required by law be responsible for reporting certain significant environmental hazards of contaminated property.

Client acknowledges that if Consultant's professional services involve the use of vehicles or other equipment as part of the Project, some damage to the project site could occur. Client understands that unless specifically stated in the Agreement, and provided Consultant uses reasonable care, correction of such damage is not the responsibility of the Consultant.

## **4.0 REUSE OF DOCUMENTS**

All documents, including reports, electronic media, drawings and specifications, prepared or furnished by Consultant and its subsidiaries, independent professional associates, subconsultants and subcontractors pursuant to this Agreement are instruments of service in respect of a particular project and the Consultant shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by Client, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than Client.

Copies of documents that may be relied upon by Client are limited to printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data graphic or other types that are furnished by Consultant to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

Any reuse or disbursement of documents to third parties without written verification or project-specific adaptation by the Consultant will be at the Client's sole risk and without liability or legal exposure to Consultant or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Accordingly, Client shall, to the fullest extent by law, defend,



indemnify and hold harmless the Consultant from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from such unauthorized reuse or disbursement. If it is necessary to distribute documents to an unrelated third party, both the third party and Client agree:

1. The third party is bound by all of the conditions and limitations of this Agreement and related documents
2. The third party is bound by all limitations of liability or indemnity provisions; and,
3. The limitation of liability set forth in Section 12 is an aggregate limit and the Client does not have the right or duty to apportion the limitation amount between itself and the third party.

Any verification or project-specific adaptation by Consultant will entitle the Consultant to further compensation at rates to be agreed upon by Client and the Consultant

## **5.0 OPINIONS OF COST**

Since the Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the Consultant's opinions of probable Total Project Costs and Construction Cost are to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional engineer familiar with the construction industry; but the Consultant cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by the Consultant. If prior to the Bidding or Negotiating Phase the Client wishes greater assurance as to Total Project or Construction Costs, the Client shall employ an independent cost estimator.

## **6.0 SUCCESSORS AND ASSIGNS**

Neither the Client nor the Consultant shall assign, sublet or transfer any rights under or interest in (including, but not without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent professional associates and consultants, as the Consultant may deem appropriate to assist in the performance of services hereunder.

Nothing in this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party.

## **7.0 ARBITRATION**

Should both parties consent to resolve a claim, counterclaim, dispute or other matter arising out of or relating to this Agreement or the breach thereof through arbitration, such matters will be decided in accordance with the Construction Industry Arbitration rules of the American Arbitration Association then pertaining. Any arbitration will be specifically enforceable under the prevailing law of any court having jurisdiction. No arbitration arising out of, or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person who is not a party to this Agreement. No consent or arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent. The award rendered by the arbitrators will be final, judgment may be extended upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted.

## **8.0 PURCHASE ORDERS**

In the event the Client issues a purchase order or other instrument related to the Consultant's services, it is understood and agreed that such document is for the Client's internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement. If the Client does issue a purchase order or other similar instrument, it is understood and agreed that the Consultant shall indicate the purchase order number on the invoices sent to the Client.



## **9.0 SUBCONSULTANTS**

Except as expressly agreed, the Client will directly retain other consultants whose services are required in connection with the project. As a service, the Consultant will advise the Client with respect to selecting other consultants and will assist the Client in coordinating and monitoring the performance of other consultants. In no event will the Consultant assume any liability or responsibility for the work performed by other consultants, or for their failure to perform any work, regardless of whether the Consultant hires them directly or as subconsultants, or only coordinate and monitor their work. When the Consultant does engage a subconsultant on behalf of the Client, the expenses incurred, including rental of special equipment necessary for the work, will be billed as they are incurred, at cost plus ten (10) percent. By engaging the Consultant to perform services, the Client agrees to hold the Consultant, its directors, officers, employees and other agents harmless against any claims, demands, costs, or judgments relating in any way to the performance or non-performance of work by another consultant or subconsultant, except claims for personal injury, death or personal property damage caused by the negligence of the Consultant's employees.

## **10.0 LIABILITY TO THIRD PARTIES**

The Client agrees to be solely responsible for, and to defend, indemnify, and hold the Consultant harmless of any and all claims by third parties arising out of or in any way related to our performance or non-performance of services, except claims for personal injury, death, or personal property damage, to the extent caused by the negligent misconduct of the Consultant's employees.

## **11.0 INDEMNIFICATION**

It is not the intention of this Agreement that the Consultant be exposed to any hazardous waste liability arising out of Site contamination, the activities of others, including the Client, or the services performed by the Consultant. The Client shall indemnify, defend, and save the Consultant, its directors, officers, employees, and agents harmless from any and all claims, demands, suits, judgments expenses, attorney's fees, and losses arising out of or in connection with bodily injury (including death) to persons or damage to property which may arise from (1) the presence, origination or transport of hazardous substances, pollutants or contaminants at, on, to or from the site at which the services are being performed under this Agreement or at, on, from, or to nearby properties, irrespective of whether such materials were generated or introduced before or after execution of this Agreement and irrespective of whether the Client was aware or directly involved in the generation or introduction of such materials or (2) reliance by the Consultant on information provided to the Consultant on the location of underground tanks, or gas, water, oil, electrical or other subterranean structures, or (3) any drilling, excavation, or similar activities undertaken hereunder at the direction of the Consultant.

The Consultant shall under no circumstances be considered the generator of any hazardous substances, pollutants, or contaminants encountered or handled in the performance of the Consultant's services. Without contradiction of any assertion by the Client of third party liability and for the purposes of this Agreement only, it is agreed that any hazardous materials, pollutants or contaminants generated or encountered in the performance of the Consultant's services shall be the responsibility of the site owner and shall be disposed of by the Client in accordance with all applicable laws and regulations.

Neither party shall have the liability for loss of product, loss of profit, loss of use, or any other indirect, incidental, special, or consequential damages incurred by the other party, whether brought as an action for breach of contract, breach of warranty, tort, or strict liability, and irrespective of whether caused or allegedly caused by either party's negligence and the Client agrees to defend, indemnify and hold the Consultant harmless with respect to any such claim.

In relation to hazardous waste for any damage caused by negligence, including errors, omissions, or other acts, or for any damages based on contract, breach of warranty, tort or for any other cause of action, the Consultant's liability including that of its employees, agents, directors, and officers shall not exceed the lesser of (1) \$50,000 or (2) the sum paid the Consultant hereunder for the services rendered.

## **12.0 LIMITATION OF LIABILITY**

Notwithstanding any other provisions of these General Terms and Condition, and unless otherwise subject to a greater limitation, the Consultant's liability to the Client for any loss or damage, including, but not limited to, special and consequential damages, arising out of or in connection with the accompanying Proposal or any related Agreement from any cause, including the Consultant's professional negligent errors and omissions shall not exceed the greater of \$50,000 or the total compensation received by the Consultant hereunder, and the Client hereby releases the Consultant from any liability above such amount.



### **13.0 ABSENCE OF WARRANTY**

All services of the Consultant and its independent professional associates, consultants and subcontractors will be performed in a reasonable and prudent manner in accordance with generally accepted engineering practice. All estimates, recommendations, opinions and decisions of the Consultant will be on the basis of the information available to the Consultant and the Consultant's experience, technical qualifications, and professional judgment.

There are no warranties of merchantability or fitness for a particular purpose or any other warranties or guarantees whatsoever, express or implied, with respect to any service performed or materials provided under this Agreement.

### **14.0 CHANGES OR DELAYS**

Unless the accompanying Agreement/Proposal provides otherwise, the proposal fees constitute the Consultant's estimate to perform the services required to complete the Project, as the Consultant understands it to be defined. For those projects involving conceptual or process development work, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. The Consultant will inform the Client of such situations so that negotiation of change in scope and adjustment to the time of performance can be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified accordingly.

Cost and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities or information, Client's failure to make payment in accordance with its obligations under this contract, or for delays caused by unpredictable occurrences or force majeure, such as fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdown, acts of God or the public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above will result in additional cost (reflecting a change in scope) beyond that outlined in this proposal.

### **15.0 PROVISIONS CONCERNING PAYMENT**

Payment is due to the Consultant by Client immediately upon receipt of deliverables to Client. If Client fails to make payments due the Consultant for services, expenses or other charges within thirty (30) days after receipt of the Consultant's statement therefore, the amounts due the Consultant will be increased at the rate of one (1) percent per month from said thirtieth day, and in addition, the Consultant may, after giving a minimum of seven (7) days written notice to the Client, suspend services under this Agreement until the Consultant has been paid in full all amounts due for services, expenses and charges. Consultant may at its sole discretion also suspend services on any or all other projects being performed by Consultant for Client under any other agreements until Consultant has been paid in full for all amounts due for services, expenses and any other charges. The Client shall be responsible for the reasonable cost of collection.

### **16.0 TERMINATION**

The obligation to provide further services under this Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Consultant will be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses.

### **17.0 STANDARD OF CARE**

The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed. Consultant will perform any services not meeting this standard, without additional compensation.



#### **18.0 SUBSURFACE INVESTIGATIONS**

In soil, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. While the Consultant will make reasonable effort to identify underground conditions, the inherent uncertainties in subsurface elevations, changed, or unanticipated underground conditions may occur that could affect total project cost and or execution. These conditions and cost/execution effects are not the responsibility of Consultant.

#### **19.0 LITIGATION AND ADDITIONAL WORK**

In the event the Consultant is to prepare for or appear in any litigation on behalf of the Client or is to make investigations or reports on matters not covered by this Agreement, or is to perform other services not included herein, additional compensation shall be paid the Consultant as is mutually agreed upon.

#### **20.0 INSURANCE**

The Consultant will secure and maintain such insurance as will protect him from claims under the Workmen's Compensation Act and from claims for bodily injury, death or property damage which may arise from the performance of Consultant's services under this Agreement.

The Consultant will secure and maintain professional liability insurance for protection against claims arising out of the performance of professional services under this Agreement caused by errors or omissions for which the Consultant is legally liable.

#### **21.0 PERIOD OF SERVICE**

The Consultant shall proceed with the services under this Agreement promptly and will diligently and faithfully prosecute the work to completion in accordance with applicable engineering standards subject to any delays due to strikes, action of the elements, act of any government, civil disturbances or any other cause beyond the reasonable control of the Consultant.

#### **22.0 TIME LIMIT ON CLAIMS**

All claims against Consultant, whether grounded in contract tort, or otherwise, shall be brought no later than three (3) years from the date of issuance of the invoice relating to the services giving rise to the claim(s). No claim(s) may be brought unless notice has been given as described below in Section 23.0.

#### **23.0 NOTICE REQUIREMENTS**

If Client discovers a defect, fault, error, non-compliance or omission in Consultant's services, it shall give written notice to the Consultant within thirty (30) days. Notice shall include a detailed description of the nature of the defect, fault, error, non-compliance or omission. Client agrees that failure to give such notice shall result in Client's waiver of the claim.

#### **24.0 EXECUTIVE ORDER 13496: NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS**

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

Contractor/subcontractor agrees to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).